



GOVERNOR ARNOLD SCHWARZENEGGER

STATEMENT OF DECISION

Request for Clemency by Clarence Ray Allen

Clarence Ray Allen has been convicted of murdering three people in an attempt to prevent witnesses from testifying against him in a possible retrial. Allen ordered these witness executions from his cell in Folsom Prison, where he was serving a life sentence for an earlier murder. A California jury sentenced Allen to death for these murders, and he is scheduled for execution on January 17, 2006. Allen now requests that his death sentence be commuted to life in prison without the possibility of parole or, in the alternative, that he be granted a 120-day reprieve to provide him more time to prepare his clemency petition.

Allen was the leader of a group that he referred to as the "Allen Gang." This group committed a series of crimes, including burglary and armed robbery, in the Central Valley in the 1970s. In 1974, members of this group burglarized Fran's Market, a small grocery store in Fresno that was owned and operated by Ray and Frances Schletewitz. Allen knew the Schletewitz family, and he had previously been a tenant of theirs.

One of Allen's accomplices in this burglary was Mary Sue Kitts, the 17-year-old girlfriend of Allen's younger son Roger. After the burglary, Ms. Kitts told Bryon Schletewitz (son of the owners of Fran's Market) about her role in the crime.

When he learned of Ms. Kitts' conversation, Allen called a meeting of some of the accomplices, and asked for a vote on whether to kill Ms. Kitts or not. Fearing that Allen would retaliate if they did not go along, the vote to kill Ms. Kitts was unanimous. Allen ordered the murder of Ms. Kitts.

Ms. Kitts was invited to a party attended by some of Allen's accomplices. There, after an aborted attempt to poison Ms. Kitts, one of the accomplices, Eugene Furrow, started to strangle her. In the midst of Furrow's attempt to strangle

Ms. Kitts, Allen called Furrow on the telephone, and asked Furrow if Kitts was dead yet. When Furrow said no, Allen ordered him to "do it." Furrow finished strangling Ms. Kitts, killing her. Allen then ordered Furrow and some of his other accomplices to dump Ms. Kitts' body in a canal, which they did.

After this murder, Allen warned members of his group that if they cooperated with law enforcement "he would get them from inside or outside prison." Allen was arrested and tried in 1977 for his role in Ms. Kitts' murder. Based on testimony from a number of witnesses, including his accomplices and Ray and Bryon Schletewitz, Allen was convicted and sentenced to life in prison.

While serving this life sentence, Allen devised a plan to kill some of the witnesses who testified against him in the Kitts murder trial presumably so he would prevail on retrial if he won his appeal. He enlisted another inmate, Billy Ray Hamilton, in this plan. Hamilton was due to be paroled in the summer of 1980, and the plan was for Hamilton to carry out the murders upon his release. Allen told Hamilton and another inmate that he wanted certain people taken "out of the box, killed." Allen arranged for his older son Kenneth to provide money and guns to Hamilton. Allen promised to pay Hamilton for the job.

In late August 1980, Hamilton was paroled. Kenneth Allen wired him transportation money and met him at a Fresno bus depot. Hamilton and Kenneth Allen discussed the planned murders, and Hamilton confirmed that he intended to murder Ray and Bryon Schletewitz. Kenneth Allen provided Hamilton with a sawed-off shotgun and a revolver.

Just before closing time on September 5, 1980, Hamilton and his girlfriend Connie Barbo went to Fran's Market looking for Ray and Bryon Schletewitz. When they arrived, they found Bryon Schletewitz and employees Douglas Scott White, Josephine Rocha, and Joe Rios. Hamilton ordered the four to the stockroom and told them to lie down. Hamilton proceeded to shoot Bryon Schletewitz at close range with the shotgun, and next shot Douglas Scott White and Josephine Rocha, both at close range. Joe Rios attempted to escape, but was shot by Hamilton at close range, and survived only because he used his arm to shield himself from the shotgun pellets. While Allen was age 50 at the time, each of his victims was young—Bryon Schletewitz was 27, Douglas Scott White was 18, Josephine Rocha was 17, and Joe Rios was 23.

Shortly after the murders, Kenneth Allen was arrested on drug charges, and he told law enforcement about the involvement of Hamilton, Barbo, and Clarence Ray Allen in the Fran's Market murders. When Hamilton was arrested, the police found that he had a list containing the names and addresses of eight witnesses, including Ray and Bryon Schletewitz, who had testified against Allen at the Mary Sue Kitts trial.¹

Allen was tried on three counts of murder and one count of conspiring to murder. The jury heard from 58 witnesses over 23 days, and they convicted Allen of all three murders with special circumstances and conspiracy to commit murder, and sentenced him to death.

Before submitting his clemency petition, Allen exhausted his state and federal appeals, and all reviewing courts have affirmed his convictions and death sentence.² Allen challenged his convictions and sentence on many grounds, including grounds that he re-argues in his clemency petition: miscounting the special circumstances; misleading arguments and instructions about the jury's discretion to impose a death sentence; inadequate representation by Allen's counsel during the penalty phase; and "lingering doubt" about Allen's guilt based on unreliable testimony of two witnesses, including Allen's son Kenneth. The courts that have reviewed Allen's case have found overwhelming evidence of his guilt and that any errors in his trial were harmless.

Allen now seeks executive clemency, based primarily on his advanced age and poor health. Allen will be 76 at the time of his execution, and his counsel argue that he is too old to receive the sentence that the jury found he deserved. Allen's death sentence will be carried out at the age of 76, in part, because he committed these crimes when he was 50. His conduct did not result from youth or inexperience, but instead resulted from the hardened and calculating decisions of a mature man.

Allen's death sentence has been delayed due to litigation. Our justice system provides Allen the right to challenge his convictions and sentence, and he has done so for the last 23 years. Allen should not escape the jury's punishment because our system works deliberately and carefully.

¹ The name of Allen's older son Kenneth was also on this list, but was crossed out.

² *People v. Allen* (1986) 42 Cal.3d 1222 [direct appeal]; *Allen v. Woodford* (9th Cir. 2004) 366 F.3d 823 [habeas corpus proceedings]; *Allen v. Woodford* (9th Cir. 2005) 395 F.3d 979 [habeas corpus proceedings]. To date, Allen's subsequent litigation to stay his execution have been unsuccessful.

Allen also stresses his infirmities, including heart disease and diabetes, and claims that his weak physical condition results from substandard health care and poor living conditions at San Quentin. Allen does not complain that he was singled out for poor treatment, but instead asserts that San Quentin provides poor treatment to all inmates. Problems and improvements in the correctional system are best addressed on a system-wide basis, not by clemency cases where the focus is on the unique situation of an individual inmate.³ In fact, the living conditions at San Quentin and the quality of health care provided to California inmates continue to be the subject of class-action litigation and remedial plans.⁴

Allen argues that he is no threat to anyone, because of his age and poor health, and therefore life in prison is an appropriate punishment. But Allen was already serving a life term when he reached out with his self-described “long arm” and killed Bryon Schletewitz, Douglas Scott White, and Josephine Rocha. Allen even glorified this type of killing in a “poem” that boasts “we rob and steal and for those who squeal are usually found dying or dead.” Allen’s crimes to silence witnesses are the most dangerous sort because they attack the justice system itself. Further, contrary to Allen’s plea for clemency, the death penalty serves the dual purpose of retribution and deterrence in this case. The Ninth Circuit Court of Appeals concluded that “[i]f the death penalty is to serve any purpose at all, it is to prevent the very sort of murderous conduct for which Allen was convicted.”

Allen alternatively argues that he should be granted a 120-day reprieve so that he can undergo SPECT and MRI testing to determine if he has a “mood disorder” that might be linked to brain damage. Allen submits a December 2005 declaration from a forensic psychiatrist who hypothesizes that Allen may have suffered brain damage from a beating that he received in 1946, or from a bout of viral encephalitis that same year. But this is speculation. SPECT and MRI testing have been available for years, and none of the mental-health experts who previously examined Allen found evidence of brain damage. And Allen’s counsel, based on a 1991 psychological report, was notified long ago of Allen’s viral encephalitis and a childhood head injury.

³ Allen also claims that the substandard health care that he has received at San Quentin has impeded his ability to prepare his clemency petition. This claim is not persuasive, and it has been considered and rejected by a court. See *Allen v. Hickman, et al.*, N.D. Cal. C05-5051 JSW.

⁴ Three such cases, all longstanding and currently in remedial stages, are *Plata v. Schwarzenegger, et al.*, N.D. Cal. C01-1351 TEH, *Coleman v. Schwarzenegger, et al.*, E.D. Cal. CIV S-90-0520 LKK JFM P (remedial plan), and *Madrid v. Woodford, et al.*, N.D. Cal. C90-3094 THE. Of additional note, *Thompson v. Enomoto*, N.D. Cal. C-79-01630 WHA, also longstanding and in remediation, pertains specifically to housing and confinement conditions for condemned inmates at San Quentin State Prison.

My respect for the rule of law and review of the facts in this case lead to my decision. Allen's jury reasonably concluded that life in prison was not the appropriate punishment for someone who orders the killing of witnesses while already serving a term of life in prison. And all of the reviewing courts agree that this case is appropriate for the death penalty. The depravity of Allen's crimes has not diminished with the years. Allen's request for clemency, in the form of a commutation or a reprieve, is denied.

DATED: January 13, 2006


ARNOLD SCHWARZENEGGER
Governor of the State of California